DOCUMENT RESUME

ED 112 547 EC 073 663

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| TITLE | Mental Retardation and the Law: A Report on Status of Current Court Cases. |
| INSTITUTION | President's Committee on Mental Retardation, Washington, D.C. |
| REPORT NO | DHEW-OHD-76-21012 |
| PUB DATE | Jun 75 |
| NOTE | 40p. |
| EDRS PRICE | MF-$0.76 HC-$1.95 Plus Postage |
| DESCRIPTORS | Civil Liberties; *Court Cases; Due Process; Equal Education; Exceptional Child Services; *Legislation; *Mentally Handicapped; State Legislation |

ABSTRACT

Featured in the issue is an analysis of the consent Decree in New York State Association for Retarded Children v. Carey (Willowbrook case). In addition, summaries and updated information are presented for 25 new cases and 34 cases previously reported regarding the following topics: architectural barriers, classification, commitment, custody, education (including West v. Secretary of Defense in California and Wilcox v. Carter in Florida), employment, protection from harm, guardianship, sterilization, treatment (including Wyatt v. Hardin in Alabama and Welsch v. Likins in Minnesota) and voting. The Willowbrook case is said to be important because it provided relief for institutionalized retarded persons based on the right to protection from harm theory. (CL)

# MENTAL RETARDATION and the LAW

## A Report on Status of Current Court Cases



JUNE 1975

This issue of "Mental Retardation and the Law" features an analysis of the recent Consent Decree in New York State Association for Retarded Children v. Carey (the "Willowbrook" case).

Altogether this issue contains reports on twenty-five new cases (indicated as new in the text by an asterisk) and updated information on thirty-four cases reported in previous issues of "Mental Retardation and the Law."

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of the Assistant Secretary for Human Development
President's Committee on Mental Retardation
Washington, D.C. 20201 U.S.A.

DHEW Publication No. (OHD) 76-21012

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* Cases reported for the first time in this issue are marked with an asterisk.

I. FEATURE

NEW YORK SIGNS FAR-REACHING CONSENT DECREE IN THE "WILLOWBROOK" CASE

The final trial on the merits in New York State Association for Retarded Children v. Carey[1] began October 1, 1974, and ended January 6, 1975.

During that time, more than 50 witnesses appeared on the stand and nearly 3,000 pages of court testimony were recorded.

Noted physicians, researchers, professors and parents, all serving as witnesses, told stories of bruised and beaten children, maggot-infested wounds, assembly-line bathing, inadequate medical care, cruel and inappropriate use of restraints, and inadequate clothing.

They testified that children had deteriorated physically, mentally, and emotionally during confinement.

On April 21, the New York Civil Liberties Union, the Legal Aid Society, and the Mental Health Law Project announced that the parties to the Willowbrook litigation had reached agreement upon the terms of a consent judgment which would, if approved by the court, resolve the lawsuit. The proposed consent decree -- covering 29 single-spaced pages, and setting forth standards in 23 areas -- was designed to secure the constitutional rights of Willowbrook residents to protection from harm.

In a press conference announcing the Willowbrook consent decree, Governor Carey said:

> "The agreement we are announcing today ends three years of acrimony and legal confrontations over Willowbrook.
>
> "We mark now the beginning of a new era of cooperation, and begin the hard work necessary to carry out this agreement and to improve services and opportunities for the retarded at Willowbrook and across the state.
>
> "This agreement will offer each mentally retarded person the opportunity to realize his or her potential and to lead as normal a life as possible. We can do no less.
>
> "These items are promised for Willowbrook immediately. They should be adopted statewide. We intend to do so.
>
> "All the retarded -- not just those at Willowbrook -- can benefit from the standards and policies contained in the agreement. It will be the policy of my administration during the course of the next four years to extend the standards contained in the Willowbrook agreement to programs and facilities for the retarded throughout the state."

1 Formerly New York State Association for Retarded Children v. Rockefeller.

Judge Judd approved the proposed consent decree on May 5, 1975, and issued an additional memorandum of his own, along with a formal order ratifying the consent decree. The consent decree sets up duty ratios of direct care staff to residents of one to four during waking hours for the majority of the residents (children, multi-handicapped, and residents requiring intensive psychiatric care). At the time the suits were filed, the ratio of staff to residents was 1-40 and 1-60 in some wards. It also requires an overall ratio of one clinical staff member for every three residents. At least one-third of the clinical staff must be at the professional level. Implementation of the ratios must be accomplished within 13 months.

The decree absolutely forbids seclusion, corporal punishment, degradation, medical experimentation, and the routine use of restraints.

It sets as the primary goal of Willowbrook the preparation of each resident, with regard for individual disabilities and capabilities, for development and life in the community at large.

To this end, the decree mandates individual plans for the education, therapy, care, and development of each resident.

Provisions in the decree require:

*Six scheduled hours of program activity each weekday for all residents.

*Educational programs for residents including provision for the specialized needs of the blind, deaf, and multi-handicapped.

*Well-balanced nutritionally adequate diets.

*Dental services for all.

*No more than eight residents can live or sleep in a unit.

*A minimum of two hours of daily recreational activities -- indoors and out -- and availability of toys, books, and other materials.

*Eyeglasses, hearing aides, wheelchairs, and other adaptive equipment where needed.

*Adequate and appropriate clothing.

*Physicians on duty 24 hours daily for emergency cases.

*A contract with one or more accredited hospitals for acute medical care.

*A full scale immunization program for all residents within three months.

*Compensation for voluntary labor in accordance with applicable minimum wage laws.

*Correction of health and safety hazards including covering radiators and steam pipes to protect residents from injury, repairing broken windows, and removing cockroaches, and other insects and vermin.

The preceding procedures must be accomplished within 13 months.

Under the Willowbrook consent decree, the defendants are further required to:

1. Reduce Willowbrook to 250 beds within six years to serve only people requiring institutional care from Staten Island.

2. Establish within a 12 month period 200 new community placements in hostels, halfway houses, group homes, sheltered workshops, and day care training programs to meet the needs of residents who will be transferred there.

3. Request the State Legislature to provide at least $2,000,000 for financing, leasing, and operating the 200 new community placements.

4. Request the Legislature to provide additional funds to develop and operate community facilities and programs annually for the next five years.

5. Develop an individual plan of care, education, and training for each of Willowbrook's 3,000 residents to prepare them for life in the community.

6. Transfer no residents from Willowbrook unless the Director determines that the new placement will offer better service.

An extremely important feature of the agreement involves the creation of three boards:

1. A seven-member Review Panel with primary responsibility for overseeing the implementation of standards and procedures mandated in the consent decree.

2. A seven-member Consumer Advisory Board comprised of parents and relatives of residents, community leaders, residents, and former residents to evaluate alleged de-humanizing practices and violations of individual and legal rights.

3. A seven-member Professional Advisory Board giving advice on all professional programs and plans, budget requests, and objectives; investigating alleged violations; and assisting in recruitment and training of staff.

The terms of the consent decree apply to the 5,209 persons who were Willowbrook residents when the suits were filed. Thus, the agreement directly applies not only to current Willowbrook residents but also to those residents who have been transferred to other state institutions for the mentally retarded.

In his important memorandum, Judge Judd noted that:

> "During the three-year course of this litigation, the fate of the mentally impaired members of our society has passed from an arcane concern to a major issue both of constitutional rights and social policy. The proposed consent judgment resolving this litigation is partly a fruit of that process."

The memorandum specifically calls attention to that part of the consent decree which recites that:

> "The steps, standards and procedures contained in Appendix 'A' hereto are not optimal or ideal standards, nor are they just custodial standards. They are based on the recognition that retarded persons, regardless of the degree of handicapping conditions, are capable of physical, intellectual, emotional and social growth, and upon the further recognition that a certain level of affirmative intervention and programming is necessary if that capacity for growth and development is to be preserved, and regression prevented."

The court's discussion of the applicable constitutional standard justifying relief to the plaintiff class was partially as follows:

> "This court's Memorandum and Order of April 10, 1972 found that there was a constitutional right to protection from harm, even in respect of persons whose confinement was not involuntary. The final judgment is couched in those terms, although it provides greater relief than did the preliminary injunction....
>
> "Had this case been finally submitted for determination on the merits, the court would have faced a substantial burden in analyzing the briefs and the mass of testimonial and documentary evidence which was submitted by both sides and which bears on the right to relief and the formulation of the various categories of relief. Happily, the parties have relieved the court of this task and have brought to bear on the forging of relief their evident expertise. The court has reviewed the proposed judgment and each of the Steps, Standards and Procedures, and finds them neither impractical, improper nor beyond the scope of the complaint.

* * *

"The consent judgment reflects the fact that protection from harm requires relief more extensive than this court originally contemplated, because harm can result not only from neglect but from conditions which cause regression or which prevent development of an individual's capabilities."

Going on to observe that in the interval since the court's preliminary injunction giving important but limited relief on "protection from harm" grounds, there "have been significant judicial decisions in the field" (citing Donaldson v. O'Connor, Wyatt v. Aderholt, and Welsch v. Likins -- all reported in previous issues of "Mental Retardation and the Law") the court further noted that:

"Somewhat different legal rubrics have been employed in these cases -- 'protection from harm' in this case and 'right to treatment' and 'need for care' in others. It appears that there is no bright line separating these standards. In the present posture of this case, there is no need for the court to re-examine the constitutional standard properly applicable to Willowbrook's residents. The relief which the parties agreed to will advance the very rights enunciated in the case law since this court's 1973 ruling."

In addition to the named parties and the U.S. Department of Justice, other groups who participated in the case as amicus curiae include: American Association on Mental Deficiency; New York Chapter of the National Association of Social Workers; Federation of Parents Organizations for New York State Mental Institutions; and New York State Federation of Chapters of the Council of Exceptional Children.

Comment:

The Willowbrook consent decree and accompanying District Court memorandum is of great significance for several reasons. Of special importance is the fact that the court ratified a consent decree providing very extensive relief -- including such areas as staffing ratios and individualized habilitation plans -- on a right to protection from harm theory. Before this case, the right to protection from harm theory, which is premised on the Eighth Amendment's prohibition against cruel and unusual punishment, had generally been regarded by advocates for the mentally retarded as less likely to provide major improvements in the conditions affecting the institutionalized retarded than "right to treatment" theories based on the equal protection or due process clauses. The reason for this was that historically, courts measuring conditions in institutions against the prohibitions of the Eighth Amendment have only acted to eliminate conditions which are truly barbarous or inhumane, or "shocking to the conscience." It was therefore assumed that under an Eighth Amendment standard, the court might be willing to enjoin the most obviously barbarous conditions, but not to order the creation of affirmative programs which would clearly be part of a constitutional right to treatment. In this case, however, after hearing extensive expert testimony, Judge Judd accepted the argument of plaintiffs that in an institution for the mentally retarded, it is

impossible for the condition of an individual resident to remain static. Inside such institutions, it is inevitable that if the functioning of a resident does not improve, it will deteriorate. Thus, in order to keep residents from being harmed, it may well be necessary to provide the full range of affirmative relief which has been ordered under a right to treatment theory by courts in such cases as Wyatt v. Aderholt and Welsch v. Likins.

On the basis of this important precedent, advocates for the mentally retarded now have a second major constitutional theory based upon the Eighth Amendment, which may be used as an alternative to a right to treatment theory based upon the Fourteenth Amendment, in an attempt to improve the habilitation and training as well as the safe custody of the mentally retarded. Even if the right to treatment theory upon which the Wyatt decision was based is rejected by the United States Supreme Court in the Donaldson v. O'Connor case (see the summary of Donaldson in the November, 1974, issue of "Mental Retardation and the Law"), the right to protection from harm theory would provide an independent vehicle for legal action on behalf of the retarded.

Secondly, the Willowbrook right to protection from harm theory, as it was set forth in the January, 1973 order of the District Court providing preliminary relief, applies to both voluntary and involuntary residents equally. By contrast, at least some of the right to treatment decisions would appear to be limited to persons who have been "involuntarily" deprived of their liberty for the purpose of habilitation. Thus, it is possible that a right to protection from harm theory, as employed in the Willowbrook case, may provide relief to a larger class of the mentally retarded, and may make it unncessary to resolve difficult questions of the applicability of right to treatment theories to "voluntary" residents.

Finally, the Willowbrook decision provides perhaps the most graphic evidence to date of the potential for legal actions to serve as the catalyst for major changes in fiscal priorities and allocations within a state system. According to an interview with Bruce Ennis, one of the attorneys for plaintiffs in the Willowbrook case, at the time the Willowbrook complaint was filed a little more than three years ago, the total budget for Willowbrook was approximately $28 Million per year. In April 1972, the requirements for upgrading, staffing and physical conditions in the preliminary order required the expenditure of an additional $10 Million. At the present time, the budget for Willowbrook is approximately $50 Million per year, and Mr. Ennis states that he has been informed by the State Budget Director that implementation of the consent decree will cost the defendants, during the current fiscal year, approximately an additional $14 Million for operational expenses and $15 Million for capital construction expenses, all of which is earmarked for Willowbrook. Finally, the consent decree will require the expenditure of an additional $2 Million to meet the needs of the members of the Willowbrook class who are presently no longer residents at Willowbrook.

According to Mr. Ennis' calculations, the budget per resident at Willowbrook, when the action was filed some three years ago, was approximately $4,600. As a result of the consent decree, the effective budget per resident of Willowbrook will be approximately $26,300. Stated differently, the state of New York will be spending approximately $40 Million more for Willowbrook this year than it was spending when the lawsuit was filed. According to Mr. Ennis:

> "We all hope and expect that these institutional expenditures will be short-run expenditures only, and that the enormous costs of institutional care pursuant to these standards will be an additional factor motivating the state to develop less restrictive and less expensive community facilities. Nevertheless, it may possibly be accurate to say that no other single case, at least in the civil rights field, has caused such a substantial increase in state expenditures."

## II. CURRENT CASES

### A. ARCHITECTURAL BARRIERS

MARYLAND: Disabled in Action of Baltimore, et al. v. Hughes, et al.,* Civil Action No. 74-1069-HM (U.S. District Court, Md.), filed October 2, 1974.

This class action was filed on behalf of all handicapped and elderly persons who are denied access to mass transit vehicles in the Baltimore metropolitan area. Plaintiffs sought to enjoin the Mass Transit Administration and the Maryland Department of Transportation from purchasing any new buses unless they were made accessible to the handicapped and the elderly.

Plaintiffs withdrew their suit following agreement on a memorandum of understanding which provided:

1. Two hundred and five buses which were being purchased would be designed according to specifications which would make them accessible to the handicapped and the elderly;

2. The transportation officials would undertake a program which would reserve three seats behind the driver exclusively for use by the handicapped and the elderly;

3. Within thirty days the transportation officials would apply for a grant to purchase ten buses equipped to meet the needs of persons who ambulate by means of a wheelchair;

4. The U.S. Department of Transportation, one of the defendants in the action, agreed to propose rules and regulations within one year to assure the availability of mass transportation to handicapped and elderly persons.

B. CLASSIFICATION

CALIFORNIA: Larry P. v. Riles, No. C-71-2270 (U.S. District Court, Northern District, Calif.), filed November 18, 1971. Preliminary Injunction Order, 343 F.Supp. 1306 (1972); Supplementary Order, December 13, 1974.

On December 13, 1974, the court:

1. Granted plaintiffs' motion to modify the class to include all California black school children who have been or may in the future be classified as mentally retarded based on IQ tests;

2. Restrained the defendants from performing psychological evaluations by the use of, or placing black children in schools for the mentally retarded on the basis of, tests which do not properly account for the cultural background and experiences of the children;

3. Ordered defendants to furnish all school districts with copies of the order within 20 days;

4. Denied plaintiffs' motion for injunctive relief restraining defendants from placing black children in classes for the educable mentally retarded (EMR) in a proportion which exceeds specific quotas;

5. Denied plaintiffs' motion for contempt against the school district;

6. Ruled that if in 120 days the percentage of children in an EMR class in any school district exceeds the total enrollment in that district, and if an IQ test is used in any manner for placement in EMR classes in that district, plaintiffs may require defendants to demonstrate affirmatively that the IQ test used properly accounts for the cultural background and experiences of black children;

7. Ruled that within 150 days defendants shall serve on plaintiffs a table for each school district indicating the percentage of black children in the total enrollment and the percentage of black children in EMR classes on the 120th day after the issuance of the court order. Further required defendants to serve at the same time a list of all IQ tests used for EMR placement in any manner for each district;

8 Ruled that use of any test which fails to comply with the injunction shall be viewed as grounds for contempt.

Subsequent to the order, the California State Board of Education disapproved its list of verbal and nonverbal standardized individual intelligence tests for the placement of children into classes for the educable mentally retarded. Thus, the state discontinued using the tests for such placement for all children, even though the court order applied only to black children.

MASSACHUSETTS: Stewart v. Phillips, No. 70-1199-F (U.S. District Court, Mass.), filed September 14, 1970.

The case has been certified as a class action on behalf of black and/or poor students in the Boston school system, not mentally retarded, who have been or will be misclassified and assigned to programs for the mentally retarded, as well as the parents of such children.

C. COMMITMENT

DISTRICT OF COLUMBIA: Poe v. Weinberger,* No. 74-1800 (U.S. District Court, D.C.), filed December 10, 1974.

Plaintiffs challenge statutory procedures which permit juveniles to be committed by parents or guardians to mental institutions as "voluntary" patients and which deny the juveniles procedural safeguards provided for "involuntary" patients.

DISTRICT OF COLUMBIA: United States v. Michael K. Shorter,* Crim. No. 67724-23 (Superior Court, D.C.), decided November 13, 1974.

Defendant in this case is a mentally retarded man who was acquitted of taking indecent liberties with a minor child and enticing a minor child based on a finding that the offenses with which he was charged were a product of his mental defect.

The government made a motion for defendant's commitment pursuant to 24 D.C. Code Section 301, which provides for commitment of persons found not guilty by reason of insanity to hospitals for the mentally ill.

The court denied the government's motion, finding inter alia: 1) that 24 D.C. Code Section 301 is not applicable to individuals acquitted because of a mental defect; 2) that treatment for the mentally retarded differs materially from treatment for the mentally ill; 3) that facilities designed for the treatment of the mentally ill are not generally suitable for the treatment of the mentally retarded; and 4) that commitment of defendant to a hospital for the mentally ill would be "inappropriate, unwarranted, futile and would amount to labor in vain."

Concluding that no statute exists in the District of Columbia that gives jurisdiction or direction to a court when a defendant is acquitted by reason of a mental defect, the court ordered the defendant released from the court's jurisdiction.

The government filed a notice of appeal in the District of Columbia Court of Appeals (Case No. 9076).

PENNSYLVANIA: Bartley et al v. Kremens et al.,* Civil Action No. 72-272 (District Court, Eastern District, Pa.).

Named plaintiffs in this case are individuals who were allegedly involuntarily committed to Pennsylvania mental health facilities pursuant to statutory provisions applicable to citizens 18 years old or younger. They sue on behalf of all citizens 18 years old or younger who may be committed to facilities for the mentally ill or mentally retarded under the challenged procedures.

Defendants are various state officials responsible for the supervision of Pennsylvania mental health facilities.

The United States has filed a friend of the court brief in support of plaintiffs' position.

Plaintiffs challenge the constitutionality of statutory provisions which permit commitment of juveniles to institutions for the mentally ill and mentally retarded simply upon application of parents or guardians, regardless of the wishes of the juvenile and without a hearing or counsel for the juvenile. Plaintiffs also claim that for the purposes of commitment they may not be afforded fewer protections than adults.

The case is pending before a three-judge court. Trial was held in September, 1974, and final arguments were presented on October 7, 1974.

D. CUSTODY

GEORGIA: Lewis v. Davis, et al.,* Civil Action No. D-26437 (Superior Court, Chatham, Ga.), decided July 19, 1974.

Plaintiff in this case was a 16 year-old borderline retarded woman who while under foster care of the Department of Family and Children's Services of the state of Georgia became the mother of a child born out of wedlock.

Defendants were officials who obtained temporary custody of the child by virtue of an ex parte order under the Juvenile Code.

Plaintiff filed a petition for habeas corpus seeking custody of the child.

Defendant maintained that:

1. Plaintiff was not capable of caring for the child without the supportive services of the Department of Family and Children's Services;

2. If custody of the child were given to the mother, as opposed to the Department, smaller financial resources would be available;

3. Since the child had been placed with the mother, she had full possession, and the best interests of the child would be served by placing formal custody with the Department.

The court found that plaintiff was an attentive mother who was receptive to training given by the Department. In addition, the court found that plaintiff would probably remain in the care of the Department for several years, and that probabilities were good that she would become an adequate mother with continued training and supervision.

The court concluded by holding that the evidence was insufficient to permit the court to deprive the plaintiff of formal legal custody of her child.

E. EDUCATION

ARIZONA: Eaton et al. v. Hinton et al.,* Civil Action No. 10326 (Superior Court, Ariz.), filed December 10, 1974.

Named plaintiffs in this class action are a six year-old boy who had been excluded from a public education, his parents, and the Arizona Association for Retarded Children. Plaintiffs sue on their own behalf, and on behalf of all other handicapped school age Arizona residents who have been excluded from, or otherwise deprived of, access to free public education.

Defendants are members of the Board of Trustees and the Superintendent of the Mohave Valley school district, sued on their own behalf and on behalf of board members and superintendents of all other Arizona public school districts.

Plaintiffs seek injunctive and declaratory relief to obtain free public education.

On the date the complaint was filed, plaintiffs obtained a temporary restraining order returning the six year-old named plaintiff to school.

CALIFORNIA: California Association for Retarded Children v. State Board of Education, No. 237277 (Superior Court, Sacramento County, Calif.), filed July 27, 1973.

A motion to dismiss filed by defendants was denied. A trial date has not been set.

CALIFORNIA: West v. Secretary of Defense, No. 73-2589-DWW (U.S. District Court, Central District, Calif.), filed April 5, 1974. Preliminary injunction as to named plaintiffs, April, 1974.

In January, 1975, the court ordered defendants to provide the names and addresses of possible plaintiffs at defendants' expense, despite defendants' contention that to obtain the 70,000 names will require an expenditure in the millions.

COLORADO: Colorado Association for Retarded Children v. State of Colorado, No. C-4620 (U.S. District Court, Colo.), filed December 22, 1972.

Motions for declaratory judgment and for certification of the class, filed by plaintiffs, as well as a motion to dismiss filed by several school district defendants, have been pending for several months. No hearing date has as yet been set.

FLORIDA: Florida ex rel. Grace v. Dade County Board of Public Instruction, No. 73-2874 (Circuit Court, Dade County, Fla.), filed November 26, 1973.

The school board stipulated that it had an obligation under the Florida statutes to provide programming either directly or by contract. As a result, contracts were let to private, out-of-state schools for the two named plaintiffs. One plaintiff received compensatory damages of $5600 for the school's failure to contract out in the previous school year. The other plaintiff refused a $7000 compensatory damage award and is seeking a greater amount.

As a result of the suit, the state has implemented guidelines for local school boards' letting of contracts, and many have been let.

FLORIDA: Florida ex rel. Stein v. Keller, No. 73-28747 (Circuit Court, Dade County, Fla.), filed November 26, 1973.

The state provided adequate programming to the named plaintiff. Following resignations from the Florida Division of Retardation by the state director and the director of the local training center, plaintiffs voluntarily dismissed the suit to give the new officials an opportunity to meet their obligations to provide appropriate programming throughout the state system.

FLORIDA: Wilcox v. Carter, Civil Action No. 73-41 (U.S. District Court, Middle District, Fla.), filed January, 1973.

No known new developments since January, 1974, issue of "Mental Retardation and the Law."

ILLINOIS: C. S. et al. v. Deerfield Public School District #109,* Civil Action No. 73 L 284 (Circuit Court, Nineteenth Judicial Circuit, Lake County, Ill.)

The plaintiffs in this case are a perceptually handicapped child and her parents.

Defendant is the school district in which the minor plaintiff attended school when she was enrolled in the second through the sixth grades.

Plaintiffs allege that as a result of the negligence of defendants' employees, the minor plaintiff was denied special education, to which she was legally entitled, for a learning disorder which was both discoverable and treatable. Plaintiffs claim that defendants' employees were negligent in one or more of the following respects:

1. They failed to administer the appropriate tests or make the appropriate evaluations which, if administered with reasonable care, would have revealed the nature of the minor plaintiff's learning disorder;

2. They failed, by careful observation or other means, to correctly identify the minor plaintiff's learning disorder;

3. Although they knew or should have known about the minor plaintiff's learning disorder, they failed to provide her the special education services that would have properly treated the learning disorder.

Plaintiffs allege that the minor plaintiff has been substantially injured in that:

1. She will suffer permanent impairment that would have been ameliorated by early appropriate treatment;

2. She has been and will continue to be deprived of a meaningful education;

3. Her future learning capacity has been substantially reduced;

4. She has suffered emotional stress, and has been deprived of certain ordinary pleasures, such as reading without great difficulty.

Plaintiffs seek $100,000 damages for the injuries sustained by the minor plaintiff, $2,000 for money expended for special education by the adult plaintiffs on behalf of the minor plaintiff, and court costs.

A motion to dismiss filed by defendant has been pending for several months.

ILLINOIS: W. E. et al. v. Board of Education of the City of Chicago et al.,* Civil Action No. 73 CH 6104 (Circuit Court, Cook County, Ill.).

Plaintiffs in this class action are certain handicapped children, their parents, and all others similarly situated, who have been denied free educations.

Defendants are the Board of Education of the City of Chicago, and the Board of Education of School District #225, Cook County, Illinois, as well as all other school districts in Illinois which fail to provide free education to the minor plaintiff class.

Article 14 of the Illinois School Code provides inter alia:

> "If because of his handicap the special education program of a district is unable to meet the needs of a child and the child attends a non-public school or special education facility that provides special education services required by the child and is in compliance with the appropriate rules and regulations of the Superintendent of Public Instruction, the school district in which the child resides shall pay the actual cost of tuition charged the child by that non-public school or special education facility or $2,000 per year, whichever is less, and shall provide him any necessary transportation.

Plaintiffs allege that it is impossible for the great majority of the minor plaintiff class to obtain the special education services they require at a cost of only $2,000 per year. Plaintiffs further allege that although all Illinois school districts are mandated by statute to provide free education for all persons between 6 and 20 years old, it is necessary for those responsible for the minor plaintiffs to pay for the education of the minor plaintiffs, solely because the minor plaintiffs are handicapped and live in school districts that are unable to meet their needs.

Plaintiffs seek the following relief:

1. A judgment declaring that the provision of the school code that sets a maximum limit on the charges for education that shall be paid by defendants violates the Illinois and United States Constitutions;

2. An injunction commanding the defendant class to make available in their own public schools the public education required by the minor plaintiffs, or alternatively, to pay the full costs of the education of the minor plaintiffs in non-public schools or special education facilities;

3. A judgment against the defendant class for the amount the plaintiff classes have paid, or have incurred obligations to pay, for the education of the minor plaintiff class;

4. Such other relief as the court deems just and proper, including a judgment for costs and reasonable attorneys' fees.

A motion to dismiss filed by defendants has been pending for several months.

KENTUCKY: Kentucky Association for Retarded Children v. Kentucky,* No. 435 (U.S. District Court, Eastern District, Ky.). Consent Decree, November, 1974.

This right to education class action was settled by a consent decree, in which the parties stipulated inter alia, that children with physical, mental, emotional, or learning handicaps have the same right to an equal educational opportunity as other children.

MARYLAND: Maryland Association for Retarded Children v. State of Maryland, Equity No. 77676 (Circuit Court for Baltimore County, Md.), filed February 14, 1973. Decided April 9, 1974.

Upon agreement of the parties, the procedural due process claim was dismissed as to the public school system in November, 1974.

NORTH CAROLINA: Hamilton v. Riddle, Civil Action No. 72-86 (U.S. District Court, Western District, N.C.), filed May 5, 1972.

The case is being held in abeyance until the court's decision in North Carolina Association for Retarded Children v. North Carolina Board of Public Education.

NORTH CAROLINA: North Carolina Association for Retarded Children v. North Carolina Board of Public Education (U.S. District Court, Eastern District, N.C.), filed May 18, 1972.

A pre-trial conference is set for May 15, 1975, although it may be further delayed.

NORTH DAKOTA: In re G. H.,* Civil Action No. 8930 (Supreme Court, N.D.), decided April 30, 1974.

At issue in this case was the liability for the costs of the education of a handicapped child who was a resident in a School for Crippled Children in North Dakota, and who was made a ward of the state in 1970. The dispute arose when the child's parents left the state in 1969, followed by a refusal by the school district in which they had previously resided to continue paying for the child's education.

On appeal of a court order requiring various agencies to pay for the child's education, the Supreme Court of North Dakota held, inter alia:

1. The right to a public education is a right guaranteed by the North Dakota Constitution;

2. The failure to provide an equal educational opportunity for handicapped children (except those, if there are any, who cannot benefit at all from it) violates the United States and North Dakota Constitutions;

3. The residence of a child determines the identity of the school district responsible for providing educational opportunity for the child. Moreover, assignment of the child to a special education school outside the district of the child's residence does not change the residence of the child;

4. The residence of a child who is made a ward of the state is separate from that of her parents.

The court specifically reserved for future determination whether those who have been unconstitutionally deprived of education in the past have a constitutionally based claim for compensatory educational effort.

NORTH DAKOTA: North Dakota Association for Retarded Children v. Peterson, Civil Action No. 1196 (U.S. District Court, Southwestern Division, N.D.).

No new developments since November, 1974, issue of "Mental Retardation and the Law."

OHIO: Cuyahoga County Association for Retarded Children and Adults, et al. v. Essex,* No. C 74-587 (U.S. District Court, Northern District of Ohio).

Named plaintiffs in this class action are the Cuyahoga County Association for Retarded Children and Adults and six retarded school-age children. Plaintiffs sue on their own behalf and on behalf of all school age Ohio residents who have been denied an educational or training opportunity simply because of their mental disabilities.

Party defendants are the Department of Education, the Department of Mental Health and Mental Retardation, and the Board of Education for the state of Ohio.

Plaintiffs challenge as unconstitutional laws and policies which:

1. Allow defendants to deny plaintiffs a program of free, compulsory education and training; and

2. Allow defendant to reclassify or exclude plaintiffs from the regular public educational system without a constitutionally adequate hearing and review of the reclassification or exclusion.

Plaintiffs seek declaratory and injunctive relief.

The parties await decision on a series of procedural motions.

WASHINGTON: Rockafellow et al. v. Brouillet et al.,* No. 787938 (Superior Court, King County, Wash.).

Plaintiffs in this class action are divided into two categories. Plaintiffs in Class I represent all residents of five institutions for the mentally retarded who are under 21 years of age. Plaintiffs in Class II represent all residents of the five institutions who are over 21 years of age, and who did not receive adequate and appropriate educational activities and programs during their institutionalization when they were of school age.

Defendants are state officials responsible in various ways for educational programs in the institutions for the mentally retarded.

Plaintiffs in Class I allege that they are not now receiving an adequate and appropriate educational program, defined as one equal in quality and duration to that provided to intellectually normal students of the same chronological age in the same school district, though directed to the unique needs, abilities and limitations of the individual resident.

Specifically, plaintiffs in Class I allege that arbitrarily, and without notice or hearing, they are being excluded from educational programs, or included in educational programs which provide less class time than is provided intellectually normal children.

Plaintiffs in Class II allege that they were similarly deprived when they were of school age.

Plaintiffs seek a writ of mandate, ordering the defendants to perform the following:

1. Enroll each Class I plaintiff in an adequate and appropriate education program;

2. Continue enrollment of each Class I plaintiff in an equivalent educational program after the plaintiff has reached age 21, until all class time unlawfully withheld has been restored on a minute-for-minute basis;

3. Enroll each Class II plaintiff in an adequate and appropriate educational program until all class time unlawfully withheld has been restored on a minute-for-minute basis;

4. Provide for proper notice and fair hearing prior to the exclusion to any extent from an educational program.

A motion to dismiss by the school district based on a failure to state a claim has been denied. The state agency defendants are now moving to dismiss on other grounds:

1. That plaintiffs have failed to exhaust administrative remedies;

2. That plaintiffs have failed to state a cause of action since educational opportunity as defined by plaintiffs is not actionable;

3. That mandamus is inappropriate, since the acts sought are discretionary and outside defendants' financial power to perform.

The motions were scheduled for hearing on February 26, 1975.

WISCONSIN: Panitch v. State of Wisconsin, Civil Action No. 72-C-461 (U.S. District Cort, Wis.), filed August 14, 1974.

The federal court has retained jurisdiction in order to monitor implementation of the Education for the Handicapped Statute.

F. EMPLOYMENT

FLORIDA: Roebuck v. Florida Department of Health and Rehabilitative Services, No. TCA 1041 (U.S. District Court, Northern District, Fla.), filed July 6, 1972.

On October 11, 1974, the Fifth Circuit Court of Appeals reversed the District Court decision dismissing the suit and remanded for further proceedings.

The Court of Appeals held that since the United States Supreme Court decision which was the basis for dismissal did not preclude action for injunctive relief, the dismissal by the District Court was improper.

INDIANA: Sonnenberg v. Bowen, No. 74 P.S.C. 1949 (Porter County Circuit Court, Ind.), filed October 9, 1974.

A motion to dismiss by defendants has been denied. Defendants have yet to file an answer to the complaint.

TENNESSEE: Townsend v. Clover Bottom, No. A-2576 (Chancery Court, Nashville, Tenn.). Appellate Decision, July 19, 1974 (Supreme Court, Tenn.), cert. granted, ___ U.S.L.W. ___, December 10, 1974 (No. 74-487).

In response to the Tennessee Supreme Court's decision, defendants petitioned the United States Supreme Court for certiorari, which was granted on December 10, 1974.

WISCONSIN: Weidenfeller v. Kidulis,* (U.S. District Court, Eastern District, Wis.), August 21, 1974.

The court has held that a valid cause of action has been stated by two mentally retarded state nursing home residents who claim they have been required to perform non-therapeutic labor without compensation, in violation of the Fair Labor Standards Act.

A motion for summary judgment by plaintiffs is pending decision.

G. PROTECTION FROM HARM

NEW YORK: New York State Association for Retarded Children v. Carey.

See Feature, pages 1-7, above.

NEW YORK: Rodriguez v. State,* 355 N.Y.S.2d 912 (Court of Claims, 1974).

A severely retarded resident of Willowbrook State Hospital recovered damages from the state in this case for injuries she received at the hospital. While recognizing that negligence cannot be presumed from the mere happening of an accident, the court held that under the circumstances, negligence could be inferred, since the child was totally helpless, and the state was charged with the highest standard of care. The court also ruled that the state was responsible whether the mishap was attributable to an attendant or another patient.

H. GUARDIANSHIP

CONNECTICUT: Albrecht v. Carlson, No. H263 (U.S. District Court, Conn.), filed December 3, 1973.

The parties entered into a Stipulation of Facts in which they agreed that the challenged statute was unconstitutional in its entirety based on the court's decision in McAuliffe v. Carlson (reported below).

In June, 1974, the court granted plaintiff's motion for summary judgment and certified the plaintiff class.

CONNECTICUT: McAuliffe v. Carlson, Civil Action No. 15, 687 (U.S. District Court, Conn.), decided May 30, 1974. Supplemental Decision, January 6, 1974.

Following the declaratory judgment, the state declined to return plaintiff's funds voluntarily. Plaintiff moved for supplemental relief.

The District Court held that the state waived its immunity under the Eleventh Amendment when acting as conservator of plaintiff's social security funds. The court ordered the funds returned, with interest. Plaintiff was also awarded court costs, but was denied attorneys' fees.

MICHIGAN: Schultz v. Borradaile,* No. 74-40123 (U.S. District Court, Eastern District, Mich.), filed October 25, 1974.

This class action, brought by a person who had been found incompetent and in need of a guardian of her property and person, challenges the constitutionality of Michigan's guardianship statutes.

Plaintiff seeks injunctive and declaratory relief.

Plaintiff claims that the statutes are unconstitutional in that:

1. They are vague and overbroad;

2. They fail to provide adequate notice of the proceedings, a right to counsel, a right to trial by jury, a right to an independent physical and mental examination, a right to a burden of proof beyond a reasonable doubt, and a right to be present at all hearings;

3. They do not provide the same protection for the allegedly mentally incompetent as do the involuntary civil commitment statutes;

4. They violate the right to privacy.

Plaintiff has requested a three-judge court, and a hearing has been set to determine if one should be convened.

PENNSYLVANIA: Vecchione v. Wohlgemuth,* 377 F.Supp. 1361 (E.D.Pa., 1974).

The court held that a statute which provided for summary seizure and control of property of mental patients to pay for hospital costs without prior or subsequent notice and hearing violated due process. The statute was also held to violate equal protection, since notice and hearing were required for patients adjudged incompetent yet denied to those not adjudged incompetent.

## I. STERILIZATION

CALIFORNIA: In re Kemp, 43 Cal. App. 3d 758 (Court of Appeals, 1974).

The California Court of Appeals unanimously held that the Superior Courts of California lack jurisdiction to order the sterilization of mental incompetents absent express statutory authorization. Although there is express statutory authorization for the sterilization of mental incompetents who are committed to state mental hospitals, no such authorization exists for individuals, like Ms. Kemp, who reside in private nursing homes. Thus, sterilization was not permitted.

DISTRICT OF COLUMBIA: Relf v. Weinberger; National Welfare Rights Organization et al. v. Weinberger et al., Civil Action No. 1557-73 and No. 74-273, 372 F.Supp. 1196 (District Court, D.C., 1974)

Notices of appeal were filed from the district court's March, 1974, order. Interim regulations were promulgated by HEW in order to comply with the order pending appeal.

On appeal, plaintiffs moved for summary affirmance of the district court order.

Defendants moved for summary affirmance with modification. In their motion, defendants asserted that the HEW regulations had been substantially revised, in order to bring them into compliance with the intent of the district court's decree. The revised regulations had not been implemented, however, since in two respects they conflicted with the district court's decree:

1. The court's order prohibited the use of federal funds for sterilization of persons who are mentally incompetent. The proposed regulations permit sterilization of persons who are mentally incompetent under state law but who are capable of understanding the nature and consequences of sterilization and of forming an intelligent desire to be sterilized;

2. The court order prohibited the use of federal funds for sterilization of minors. The proposed regulations permit the sterilization of persons over the age of 18. In states where persons over 18 are still defined as minors, the proposed regulations prohibit sterilization unless the minor, and also the minor's parents or guardians, if required by state law, have given their knowing and informed consent.

Defendants sought to have the district court's order modified so as to permit implementation of the revised regulations.

On April 18, 1975, the United States Court of Appeals for the District of Columbia denied without prejudice both sets of motions for summary affirmance, and remanded the record to the district court for consideration of the proposed modifications.

Following the remand, plaintiffs alleged that key, uncontested portions of the March, 1974, order were not being adequately enforced. Plaintiffs also opposed modification of the order.

Over objection from HEW, on March 13, 1975, the court ordered full discovery with respect to enforcement of the regulations. The enforcement and modification issues are to be heard together on a yet unscheduled trial date. A status conference has been set for July 10, 1975.

MISSOURI: In re M. K. R.,* 515 S.W.2d 467 (Supreme Court of Missouri), November 12, 1974.

This appeal followed a judgment of the juvenile court authorizing sterilization of a mentally deficient female child whose mother had petitioned the court for approval of sterilization. The appellate court reversed, holding that the juvenile court lacked jurisdiction to deny the child the fundamental right to bear a child. While recognizing that the juvenile code should be liberally construed so as to provide such care as is necessary to the welfare of the child, the court stated:

> "Whatever may be the merits of permanently depriving this child of this right, the juvenile court may not do so without statutory authority -- authority which provides guidelines and adequate legal safeguards determined by the people's elected representatives to be necessary after full consideration of the constitutional rights of the individual and the general welfare of the people."

NORTH CAROLINA: Cox v. Stanton, Civil Action No. 800 (U.S. District Court, Eastern District, N.D.). Appeal pending, U.S. Court of Appeals, Fourth Circuit.

Briefs have been filed, and the parties are awaiting a date for argument.

NORTH CAROLINA: Trent v. Wright (U.S. District Court, Eastern District, N.C.), filed January 18, 1974.

The parties have agreed to await a decision in Cox v. Stanton (reported above), before proceeding with the litigation.

WISCONSIN: In re Mary Louise Anderson,* (Dane County Court, Branch I, Wis.), decided November, 1974.

The father of a mentally retarded 19 year old woman, who was also her temporary guardian, petitioned the court for an order authorizing him to consent to her sterilization.

Testimony in support of the sterilization was received from the ward and both her parents. A consent to sterilization signed by the ward, and certifications from two physicians and a Ph.D. supporting sterilization were also filed with the court.

At a subsequent proceeding, the guardian ad litem made an oral report in opposition to the petition.

The court denied the petition to consent to sterilization, holding:

1. It was totally correct for the temporary guardian to petition the court, since regardless of the medical necessity that may be involved or what may be perceived as the best interests of the ward, authorization to sterilize should only come from a court after a full evidentiary hearing.

2. Before sterilization should be authorised, a court must be satisfied:

   a. That the procedure is a medical necessity or in the best interests of the ward;

   b. That all the less drastic alternatives have been investigated, and;

   c. That all the less drastic alternatives are unsuitable.

3. Although there is evidence that sterilization is in the best interests of the ward, the guardian ad litem disagreed. Any doubts about such matters should be resolved against sterilization.

4. There are less drastic alternatives which should be explored by the guardian.

J. TREATMENT

ALABAMA: Wyatt v. Hardin[1]

The defendants in Wyatt decided not to appeal the Fifth Circuit's decision to the United States Supreme Court. The Wyatt right to treatment decision now stands as a final decree. But in the Wyatt companion case -- Burnham v. Department of Public Health of the State of Georgia (which was reversed and remanded by the Fifth Circuit on the basis of its Wyatt decision) -- the Georgia Department of Health has petitioned the Supreme Court for a writ of certiorari.

In addition, important developments on sterilization and right to refuse treatment issues have taken place in this case back at the U.S. District Court level, as part of the District Court's continued monitoring of its decision.

1 The name Hardin has been substituted for that of Aderholt and Stickney, whom he has succeeded as Commissioner of Mental Health.

Sterilization: Last year, counsel for plaintiffs discovered that a number of young women at Partlow School in Alabama had been sterilized in that institution, and the complaint was amended to seek an injunction of this practice. A three-judge court held the Alabama statute unconstitutional on due process grounds. Judge Johnson then announced detailed procedures which must be followed before any resident of the institution is to be sterilized.

Right To Refuse: The court has taken two actions recently in relation to Standard Nine of its April, 1972 order, which prohibited use in state mental hospitals of electroconvulsive therapy, aversive conditioning and other unusual or hazardous procedures unless the patient had given express and informed consent.

1. The Searcy (Hospital) Human Rights Committee, in September 1974, urged the court to amend Standard Nine for the purpose of providing greater flexibility in administration of ECT. The court asked amici to submit proposed revisions.

On February 28, 1975, the court revised Standard Nine by an order which (a) prohibits all psychosurgery and similar surgical procedures; (b) allows ECT only in the cases of persons eighteen or older and only in accordance with specific standards and procedures which would govern the qualifications of those recommending and administering ECT, would assure the fully-informed and voluntary character of consent, would provide for appointed counsel and an opportunity to consult with an independent expert, would require advance approval by a multi-disciplinary "outside" Extraordinary Treatment Committee, and would afford persons competent to give consent an absolute right of refusal and provide added safeguards in the cases of those who are incompetent; and (c) allows aversive conditioning to be used only in accordance with procedures generally equivalent to those proposed for ECT.

The order flatly prohibits aversive conditioning when competent consent is unattainable. This is the major substantive respect in which the court's order differs from the standards submitted by the amici professional organizations. The professional organizations have filed a motion to amend the order to allow aversive conditioning to be administered to incompetent patients upon Extraordinary Treatment Committee approval of the treatment as being clearly in the patient's best interests.

While technically, these standards apply only to Alabama's institutions for the mentally ill, they are reported here because of their precedential value and the likelihood that the court may in the future apply them to Partlow School for the Retarded as well.

2. At Bryce Hospital between April, 1972 and May, 1974, several patients were subjected to ECT in violation of Standard Nine. A December, 1972 hospital-policy directive that conflicted with Standard Nine was in effect while most series of ECT were administered. On February 28, 1975, a hearing was held to determine whether a staff physician, two psychiatrists and the hospital director should be held in contempt for violations of the court order. The court has not yet rendered its decision.

DISTRICT OF COLUMBIA: Dixon v. Weinberger[1], Civil Action No. 74-285 (D.D.C., filed February 14, 1974).

In May, 1974, defendants moved to dismiss the suit, contending, inter alia, that involuntarily confined patients did not have a right to suitable treatment in less restrictive alternative facilities. Plaintiffs submitted briefs in opposition in June. On January 19, 1975, the District Court heard oral argument on the pleadings, and rejected defendants' arguments that they had neither the authority nor duty to assure that committed patients are placed in less restrictive alternatives. At the same time the court ruled that the would-be organizational plaintiffs -- American Orthopsychiatric Association, American Psychiatric Association, National Association for Mental Health and American Public Health Association -- did not have standing to sue. The nine named plaintiffs have now filed a motion for summary judgment.

FLORIDA: Donaldson v. O'Connor, 493 F.2d 507 (5th Cir. 1974), cert. granted, 43 U.S.L.W. 3103 (October 21, 1974).

The Donaldson case was argued in the U.S. Supreme Court on January 15, 1975. A decision is expected to be handed down before the end of the present Supreme Court term, which ends in June.

GEORGIA: Burnham v. Department of Public Health of the State of Georgia

In response to the Fifth Circuit decision holding that there is a constitutional right to treatment, defendants have filed a petition for certiorari in the United States Supreme Court (Supreme Court No. 74-904).

HAWAII: Gross et al. v. State of Hawaii,* No. 43090 (Circuit Court, First Circuit, Hawaii)

This is a Wyatt-type class action on behalf of mentally retarded citizens of the state of Hawaii.

Plaintiffs seek declaratory and injunctive relief.

The case is presently in the discovery stage.

1 Formerly Robinson v. Weinberger.

ILLINOIS: Nathan v. Levitt, No. 74 CH 4080 (Circuit Court, Cook County, Ill.). Consent Order, March 26, 1975.

On March 26, 1975, the court entered a consent order. The court's decree ordered implementation of various provisions with respect to testing and evaluation, placement and treatment, and staff training.

The testing and evaluation provisions require that:

1. All persons confined in, or seeking admission to, state facilities for the mentally ill, who are also diagnosed as mentally retarded, shall be referred to a testing and diagnostic facility for a comprehensive evaluation covering physical, emotional, social and cognitive factors;

2. Following the comprehensive evaluation at the testing facility, standardized psychological tests shall be administered at the treatment facility. The tests are to include an assessment of the individual's adaptive behavior in the community and in an institutional setting to enable formulation of an individualized treatment plan and to facilitate appropriate placement;

3. The mental health professional responsible for monitoring the implementation of a patient's treatment plan shall make a notation in the patient's record and forward an immediate referral for testing and evaluation, if it appears that a patient may be mentally retarded;

4. Testing is to be completed within thirty days from the date of referral, except when special clinical circumstances warrant postponement. If testing is to be postponed, a detailed notation of the reasons for postponement must be recorded in the patient's record.

The placement and treatment provisions require inter alia:

1. Degrees of retardation shall be defined in accordance with the definitions in the Manual on Terminology and Classification in Mental Retardation (1973 edition), published by the American Association on Mental Deficiency.

2. All persons diagnosed as severely or profoundly mentally retarded who are currently on wards for the mentally ill shall be transferred immediately to facilities or units equipped to treat mental retardation. The transfers are to be completed no later than thirty days from the date of diagnosis.

3. All persons diagnosed as both severely or profoundly mentally retarded and mentally ill shall be placed in a facility for the mentally retarded on a special unit which treats such persons. Persons currently residing on wards for the mentally ill shall be transferred immediately, unless special clinical reasons exist for a

delay. If delay is warranted, transfer must be accomplished within thirty days from the date of the court's order, and the reasons for delay must be noted in the patient's record.

4. With respect to persons diagnosed as solely mildly or moderately mentally retarded, the Department of Mental Health and Developmental Disabilities (DMHDD) shall recommend services from or placement in a community program which will meet the patient's needs. The DMHDD shall give assistance in effectuating the provision of services.

5. With respect to persons diagnosed as both mentally ill and either mildly or moderately retarded:

a. The testing facility shall investigate all less restrictive alternatives to hospitalization. Referrals shall be made to appropriate settings outside the hospital and assistance given to effectuate provision of services.

b. If all alternatives to hospitalization prove unsuitable, the persons shall be placed in an appropriate treatment program. All attempts to place a person and the results of such attempts shall be noted in the patient's record.

c. If the person is placed on a unit for the mentally ill, a treatment plan shall be formulated by an inter-disciplinary team composed of professionals in both mental retardation and mental illness. An initial treatment plan, which documents the person's physical and mental condition at admission and his needs for further testing and evaluation must be prepared within 72 hours of admission.

A detailed revised treatment plan must be prepared within 14 days. That plan must include: a detailed description of the patient's condition and needs, a detailed description of the recommended treatment, a list of persons responsible for implementing the treatment, a statement of the need for vocational instruction and a plan for such instruction, a description of required educational instruction, a concise statement of treatment goals and a projected timetable for their attainment, a description of the relationship between elements of the treatment plan and the treatment goals, a plan for involvement in treatment of persons from the patient's normal environment, and the signed approval of a mental health professional.

The treatment plan shall be reviewed and updated monthly.

Each plan shall specify the appropriate treatment for both the mental retardation and the mental illness, and whether they are to be treated simultaneously or separately.

d. The DMHDD shall provide an adequate number of qualified staff to implement the plan.

e. Residents who are under 17 years of age shall not be housed with older patients except as provided by statute.

The training provisions require that mental health professionals assigned to intake units participate in an organized continuing training program on the subject of recognition and treatment of mental retardation.

The court has retained jurisdiction of the case and has imposed various reporting requirements in order to monitor implementation of the order.

ILLINOIS: Wheeler v. Glass, Civil Action No. 71-1677 (U.S. District Court, Ill.), filed November 13, 1970.

The one defendant who filed an appeal dismissed his appeal on September 24, 1974.

The judgments, attorneys fees and costs have all been paid.

MARYLAND: Maryland Association for Retarded Children v. Solomon,* No. N-74-228 (U.S. District Court, Md.).

This is a Wyatt-type class action suit brought on behalf of all persons who are now or who may become residents of Henryton Hospital Center, a Maryland institution for the mentally retarded.

Plaintiffs seek declaratory and injunctive relief.

Under an informal agreement, no answer or other responsive pleading has yet been filed by defendants.

MARYLAND: United States v. Solomon, Civil Action No. N-74-181 (U.S. District Court, Md.), filed February 21, 1974.

No known new developments since November, 1974, issue of "Mental Retardation and the Law."

MINNESOTA: Welsch v. Likins, Ruling on Liability, 373 F.Supp. 485 (U.S. District Court, Minn., 1974). Final Order, October, 1974.

A motion by plaintiff for court costs is currently under consideration by the court.

MONTANA: United States v. Kellner,* Civil Action No. 74-1-138-BU (District Court, Mont.), filed November 8, 1974.

Plaintiff in this Wyatt-type right to treatment case is the United States.

Defendants are various Montana officials responsible for the operation of the Boulder River School and Hospital, a state facility for mentally retarded Montana citizens.

Plaintiff seeks to enjoin violations of rights of residents and potential residents guaranteed by the Eighth, Thirteenth and Fourteenth Amendments to the United States Constitution.

Plaintiffs allege that defendants have:

1. Failed or refused to provide residents with adequate treatment and habilitative care;

2. Failed or refused to provide residents with decent and humane living conditions and to keep such residents free from harm; and

3. Employed or permitted the employment of residents without compensation in non-therapeutic work not related to personal hygiene or housekeeping responsibilities of the particular resident.

Defendants have answered the complaint, and pretrial discovery is proceeding.

PENNSYLVANIA: Halderman v. Pennhurst State School and Hospital, No. 74-1345 (U.S. District Court, Eastern District, Pa.), filed May 30, 1974.

The United States was granted leave to intervene as a party plaintiff, and the Pennsylvania Association for Retarded Children has drafted a complaint with the intention of joining the suit as a party plaintiff.

No other known new developments since the November, 1974, issue of "Mental Retardation and the Law."

NEBRASKA: Horacek v. Exon, Civil Action No. CV 72-6-299, filed September 28, 1972. Preliminary Order, 357 F.Supp. 71 (D. Nebraska 1973).

The case was not tried on the scheduled date in December, 1974, and no new trial date has been set. Negotiations have apparently broken down.

TEXAS: Jenkins v. Crowley,* No. CA3-74-394-C (U.S. District Court, Northern District, Tex.)

This is a Wyatt-type class action brought on behalf of all allegedly mentally ill or mentally retarded persons who are now or may become residents of Terrill State Hospital or any other state hospital under the auspices of the Texas Department of Mental Health and Mental Retardation.

Plaintiffs are actively engaged in discovery and are in the process of inspecting the premises of all the mental hospitals in the state.

Plaintiffs have raised with the court the possibility of having a "Participant Observer" Study completed at several of the hospitals. The court has ordered plaintiffs and defendants to work out the criteria for such a study.

At the court's request the Justice Department has entered the case as amicus. In so doing, however, the Justice Department indicated that the expedited trial date of April 7, 1975, seems untenable, since it feels that neither plaintiffs nor amicus can be prepared for trial by that time.

WASHINGTON: Boulton v. Morris,* No. 781659 (Superior Court, King County, Wash.).

Plaintiffs in this class action represent all residents of the Rainier School, a Washington institution for the mentally retarded.

Defendants are various officials responsible for operation of the Rainier School.

Plaintiffs seek an injunction requiring the Department of Social and Health Services to increase the institution's professional and custodial staff, in order to provide the same ratio of staff to residents and the same level of care and habilitation that is provided at other institutions of the same kind operated by the department. Plaintiffs allege that as a result of understaffing they are being discriminated against, in violation of the equal protection clause of the U.S. Constitution, and that they are being denied the right to treatment in violation of the due process clause of the U.S. Constitution, as well as the Constitution and statutes of the state of Washington.

WASHINGTON: Preston v. Morris, No. 77-9700 (Superior Court, King County, Wash.), filed April 23, 1974.

No new known developments since the November, 1974, issue of "Mental Retardation and the Law."

WASHINGTON: White v. Morris,* Civil Action No. 78-966 (Superior Court, King County, Wash.), decided November 15, 1974.

Finding that a mentally retarded offender who is subject to the correctional system of the state has a right to treatment, the court ordered the state to pay for the costs of a private residential program for his care, custody, treatment, reformation, correction, and habilitation.

K. VOTING

NEW JERSEY: Carroll et al. v. Cobb et al.,* Civil Action No. L-6585-74-P.W. (Superior Court, N.J.), decided November, 1974.

Plaintiffs in this class action were thirty-three adult residents of the New Lisbon State School, a school for the mentally retarded maintained by the state of New Jersey, located in Woodland Township, Burlington County, New Jersey.

Defendants were the Clerk of Woodland Township and the Burlington County Board of Elections.

Plaintiffs claimed that they were being denied their right to vote, in violation of the Constitution and statutes of both the United States and New Jersey, simply because of their status as residents of the New Lisbon State School, and despite the fact that each member of the class had been determined to be competent by qualified representatives of the Department of Institutions and Agencies.

Plaintiffs sought declaratory and injunctive relief to compel the defendants to immediately register all members of the class and to permit them to vote in the November 5, 1974, election.

On October 29, 1974, the court ruled both that the plaintiffs were residents of Woodland Township for the purposes of voting and that the refusal of the Clerk of Woodland Township and Burlington County Board of Elections to register the plaintiffs was unlawful.

Subsequent to the court's order, plaintiffs registered to vote, and many voted in the November 5, 1974, election.

Both defendants have appealed the court's decision.

## III. CLOSED CASES REPORTED IN EARLIER ISSUES OF "MENTAL RETARDATION AND THE LAW"

### A. ARCHITECTURAL BARRIERS

DISTRICT OF COLUMBIA: Urban League v. WMATA, Civil Action No. 1776-72 (U.S. District Court, D.C.).

OHIO: Friedman v. County of Cuyahoga, Case No. 895961 (Court of Common Pleas, Cuyahoga County, Ohio), Consent Decree entered November 15, 1972.

### B. CLASSIFICATION

LOUISIANA: Lebanks v. Spears, 60 F.R.D. 135 (E.D.La., 1973).

### C. COMMITMENT

INDIANA: Jackson v. Indiana, 406 U.S. 715 (1972).

OHIO: In re Fisher, 39 Ohio St. 2nd 71, 213 N.E.2d 851 (1974).

WEST VIRGINIA: State ex rel. Willard Miller v. Jenkins, 203 S.E.2d 353 (1974).

WISCONSIN: State ex rel. Matalik v. Schubert, 57 Wis.2d 315, 204 N.W.2d 13 (Wis. Supreme Court, 1973).

WISCONSIN: State ex rel. Gerald Haskins v. County Court of Dodge County, 62 Wis.2d 250, 214 N.W.2d 575 (Wis. Supreme Court, 1974).

### D. CUSTODY

IOWA: In the Interest of Joyce McDonald, State of Iowa v. David McDonald, Civil Action No. 128-55162 (Supreme Court of Iowa), October 18, 1972.

IOWA: In the Interest of George Franklin Alsager, State of Iowa v. Alsager, Civil Action No. 169-55141 (Supreme Court of Iowa), October 18, 1972.

### E. EDUCATION

CALIFORNIA: Lori Case v. California, Civil Action No. 101679 (Calif. Superior Court, Riverside County).

CONNECTICUT: Kivel v. Nemoitan, No. 143913 (Superior Court, Fairfield County, Conn.), July 18, 1972.

DISTRICT OF COLUMBIA: Mills v. Board of Education of the District of Columbia, 348 F.Supp. 866 (D.D.C. 1972).

MICHIGAN: Harrison v. State of Michigan, 350 F.Supp. 846 (E.D. Mich., 1972).

NEW YORK: In the Matter of Peter Held, Civil Action No. H-2-71, H-10-71 (Family Court, Westchester County), November 29, 1971.

NEW YORK: Piontkowski v. Gunning et al.

NEW YORK: Reid v. Board of Education, No. 8742 (Commissioner of Education, N.Y.), November 26, 1973. Federal Abstention Order, 453 F.2d 238 (2d Cir., 1971).

PENNSYLVANIA: Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F.Supp. 1257 (E.D.Pa. 1971).

WEST VIRGINIA: Doe v. Jones, decided January 4, 1974.

WISCONSIN: Wisconsin ex rel. Warren v. Nusbaum, ___ Wis.2d ___, 219 N.W.2d 577 (Supreme Court, Wis., 1974).

F. EMPLOYMENT

DISTRICT OF COLUMBIA: Souder v. Brennan, Civil Action No. 482-73 (U.S. District Court, D.C.), November 14, 1973.

IOWA: Brennan v. State of Iowa, No. 73-1500 (U.S. Court of Appeals, Eighth Cir.), February 26, 1973.

MAINE: Jortberg v. Maine Department of Mental Health, Civil Action No. 13-113 (U.S. District Court, Maine), Consent Decree, June 18, 1974.

MISSOURI: Employees of the Department of Public Health and Welfare, State of Missouri v. Department of Public Health and Welfare of the State of Missouri, ___ U.S. ___, 93 S.Ct. 1614 (1973).

G. TREATMENT

CALIFORNIA: Revels et al. v. Brian et al., No. 658-044 (Superior Court, San Francisco, Calif.).

ILLINOIS: Rivera v. Weaver, Civil Action 72C135 (1973).

MASSACHUSETTS: Ricci v. Greenblatt, Civil Action No. 72-469-T (U.S. District Court, Mass.), Consent Decree, November 12, 1973.

OHIO: Davis et al. v. Watkins et al., No. 673-205 (U.S. District Court, N.D., Ohio), September 9, 1974.

PENNSYLVANIA: Janet D. v. Carros, No. 1079-731 (Court of Common Pleas, Allegheny County, Pa.), March 29, 1974.

PENNSYLVANIA: Waller v. Catholic Social Services, No. 74-1766 (U.S. District Court, E.D., Pa.).

TENNESSEE: Saville v. Treadway (U.S. District Court, M.D., Tenn.). March 8, 1974.

H. ZONING

CALIFORNIA: Defoe v. San Francisco Planning Commission, Civil Action No. 30789 (Superior Court, Calif.).

MICHIGAN: Doe v. Damm, Complaint No. 627 (U.S. District Court, E.D., Mich.).

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